

1 Structure of Request for Tender

- 1.1 The documents comprising the Request for Tender collectively mean the Tender Documents and comprise:
- the Invitation to Offer;
 - these Conditions of Tender;
 - the Tender Response Forms including all annexures (annexed to these Conditions of Tender);
 - the Contract;
 - the Specification;
 - the Relevant Documents identified in the Invitation to Offer; and
- (g) amendments or additions to the Tender Documents provided to a Tenderer as an addendum in accordance with these Conditions of Tender.
- 1.2 All parts of the Request for Tender must be read and construed together so that all parts are as far as possible consistent. Where the documents are inconsistent, the documents should be read and construed in the order of priority as detailed in the Invitation to Offer.
- 1.3 The Tenderer acknowledges:
- that the Request for Tender and these Conditions of Tender do not constitute an offer by the Principal to enter into the Contract or any other agreement; and
 - no contract exists or will come into force between the Principal and the Tenderer unless and until the Contract is formed in accordance with these Conditions of Tender.
- 1.4 In consideration of the Principal inviting persons to submit an Offer, the Tenderer agrees to be bound by the Offer it submits.
- 1.5 In this Request for Tender:
- a reference to a party is to be construed as a reference to a party to this Request for Tender and includes its successors and permitted assigns;
 - where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
 - terms which are defined in the Tender Response Forms, the Contract or the other Tender Documents shall have the same meanings for the purposes of these Conditions of Tender;
 - references to documents or agreements including this Request for Tender include a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
 - in the interpretation of this Request for Tender, headings are to be disregarded;
 - no rule of construction or interpretation applies to the construction or interpretation of this Request for Tender to the disadvantage of the Principal on the basis that the Principal prepared this Request for Tender or any part of it;
 - a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - the words 'including' and 'includes' and any variants of those words, will be read as if followed by the words 'without limitation'; and
 - the Principal's obligations to the Tenderer are limited to those expressly set out in these Conditions of Tender and exclude (to the maximum extent permitted by law) any obligations which may otherwise be implied or imposed on the Principal under contract, under law, in equity, by statute or otherwise.

2 Obtaining Information

- 2.1 The Principal will provide the Tenderer with the Request for Tender. No fee is payable for the supply of the Request for Tender.
- 2.2 Any questions or additional information required by a Tenderer must be obtained using the Electronic Tender Box forum.
- 2.3 Without limiting its right to do so, the Principal is not required to respond to any questions or requests for additional information from the Tenderer received later than 5:00 pm on the date four (4) Business Days prior to the Closing Time.
- 2.4 A Tenderer must:
- direct any questions or request for information:
 - prior to the Closing Time, to the Contact Person via the Electronic Tender Box forum; and where practical, no later than 4 Business days prior to Closing Time.; and
 - after the Closing Time, to the Contact Person by email to procurement@frasercoast.qld.gov.au, which correspondence must clearly state the details of the Tender (including the Tender number and name) Tenderer's name and the Tenderer's contact details.
- 2.5 Notwithstanding clause 2.4(a)(ii), the Tenderer must:

- only contact the Contact Person in connection with the Tender process, the Tender Documents or its Tender;
 - not direct any questions or request for information to, or seek to discuss the Tender process with any Councillor or officer of the Principal, other than the Contact Person; and
 - submit the Tenderer's Tender strictly in accordance with clause 4.
- 2.6 The Principal will not be bound by any advice or information furnished by a Councillor or officer of the Principal (other than the nominated Contact Person) with respect to the Request for Tender.
- 2.7 The Tenderer agrees that in regards to the Relevant Documents:
- it has not relied and will not rely upon, any Relevant Documents for any purpose (including without limitation determining whether or not to lodge a tender, preparing its tender, entering into the Contract or performing its obligations under the Contract);
 - it has been or will be provided with Relevant Documents only for the Tenderer's convenience and the Principal does not assume any responsibility, duty of care in respect of, give any warranty or guarantee or make any representations as to the Relevant Documents;
 - the information is not warranted or represented by the Principal as accurate, correct or adequate;
 - there may be other information relevant to these Conditions of Tender, the Tender process or the Contract in the knowledge or possession of the Principal or its Personnel that has not been provided to the Tenderer;
 - to the extent that the Principal is not the author or source of any Relevant Documents, the Principal is only the conduit of that information and does not adopt its contents;
 - the Tender process and all information provided to the Tenderer reflect the Principal's current intention only, and may change at any time, and any such change is at the Tenderer's risk;
 - it shall have no claim against the Principal or any employee, agent or contractor of the Principal (whether in contract, tort (including negligence), equity, under statute or otherwise) from or in connection with the provision of the Relevant Documents; and
 - without prejudice to clause (a), must satisfy itself as to and take into account any matter or thing disclosed by any Relevant Documents relevant to the Contract.
- 2.8 If the Principal makes information available to a Tenderer, the Principal reserves the right to distribute the information to each Tenderer who has obtained a copy of the Request for Tender from the Principal. If information is to be made available to all Tenderers, that information will be made publicly available via the Electronic Tender Box forum.
- 2.9 If requested by the Principal, the Tenderer must:
- provide further information relating to the Tender; and
 - give a presentation at a time and place nominated by the Principal:
 - to demonstrate the Tenderer's financial substance, technical capabilities and resources;
 - to demonstrate its ability to comply with the terms and conditions of the Contract; and
 - in relation to anything else relative to the Tender;
 - allow the Principal and its agents to inspect any facility or equipment the Tenderer proposes to use in complying with the terms and conditions of the Contract;
 - authorise the Principal and its agents (in writing, if required) to contact any referee nominated by the Tenderer; and
 - authorise the Principal (in writing, if required) to obtain information about the Tenderer, particularly information relevant to the Tenderer's ability to discharge the responsibilities of the Contractor under the Contract, from any third party the Principal considers may be able to provide that information.
- 2.10 The Principal will provide information to Tenderers in electronic format only, unless in the case that there is a briefing or site inspection, which in that case information, may be provided verbally.
- 2.11 The Tenderer agrees and acknowledges that:
- if specified by the Principal in the Invitation to Offer, the Contract will include General Conditions of Contract produced by Standards Australia Limited (ACN 087 326 290) (**Australian Standard Contract**) as amended;
 - the Principal will provide to the Tenderer as part of the Request for Tender the Contract Amendments and Particulars;
 - the Principal will not and is not required to provide the Tenderer with a copy of the unamended Australian Standard Contract as part of the Request for Tender and the Tenderer shall be responsible for obtaining at its cost a copy of the unamended Australian Standard Contract;

- (d) the Principal shall provide an Australian Standard Contract incorporating the agreed Contract and Amendment Particulars to the successful Tenderer and such document shall form part of the Contract notwithstanding any inconsistency between it and the unamended Australian Standard Contract obtained by the Tenderer.

3 Tenderer's Responsibilities and Obligations

- 3.1 In submitting its Tender, each Tenderer warrants that it has:
- carefully read and considered the Request for Tender and any other information made available by the Principal with respect to the Request for Tender and the process of tendering for the Contract;
 - carefully read and considered all information relevant to the risks, contingencies and other circumstances relevant to the Request for Tender;
 - informed itself of the nature of the obligations it must discharge under the Contract;
 - informed itself of the labour, plant and equipment and other items necessary, suitable or desirable to enable the Tenderer to discharge its obligations under the Contract;
 - not relied, will not rely and will not allow its Personnel to rely upon the Relevant Documents for any purpose;
 - independently verified any information provided by or on behalf of the Principal (including the Relevant Documents), and satisfied itself that the information is adequate and accurate;
 - conducted an examination of the Site (if any) and its surroundings;
 - satisfied itself that the information in its Offer is accurate and complete;
 - by notice in writing via the Electronic Tender Box forum, advised the Principal of any error, discrepancy, ambiguity, incompleteness, omission, inquiry or other issue arising in connection with the Tender Documents immediately when the Tenderer becomes aware of it; and
 - satisfied itself that its Offer complies in all respects with the requirements of these Conditions of Tender.
- 3.2 In evaluating Tenders and determining with whom it may enter the Contract, the Principal will rely upon Tenderers having complied with the requirements of Clause .
- 3.3 Failure to comply with any requirement in Clause will not relieve the successful Tenderer of responsibility to complete the Contract in accordance with the Principals terms, or agreed terms, and in particular, the price or rate tendered by the Tenderer.
- 3.4 If a Tenderer comprises two or more parties (whether as a joint venture, consortium, partnership or any other unincorporated grouping of two or more persons) the obligations and liabilities of those persons is joint and several.
- 3.5 Except to the extent expressly provided by the Request for Tender, the Principal will not be responsible for the payment of and no Tenderer shall have any Claim against the Principal or any employee, agent or contractor of the Principal (whether in contract, tort (including negligence), equity, under statute or otherwise) arising from or in connection with, any costs, expenses, losses or other liabilities incurred by the Tenderer in:
- attending any briefing or site inspection under Clause 2;
 - preparing and lodging its Offer (including the provision of further information at the Principal's request);
 - participating in any post Tender activities;
 - the Principal exercising in its absolute discretion, any discretion or right it has under these Conditions of Tender (including, but limited to, terminating the Tender process); and
 - any of the matters or things relevant to the Contract in respect of which the Tenderer takes the risk of or must satisfy itself under the Request for Tender.
- 3.6 In preparing and lodging its Offer (including accessing the Site for any reason), the Tenderer must comply with all applicable laws and legal requirements.
- 3.7 If a Site Inspection(s) is applicable for this Tender, every Tenderer must:
- attend the Site at the time and date set out in the Invitation to Offer for the purposes of carrying out such inspection or investigation of the Site as the Principal requires;
 - not access the Site at any time unless accompanied by a representative of the Principal, or prior approval is sought from the Principal; and
 - comply with any conditions imposed by the Principal in connection with the Tenderer's access to the Site.

4 Formal Requirements

- 4.1 The Offer must:
- be submitted in electronic format via the Electronic Tender Box, any Offer received in any other manner will not be considered;
 - be submitted in English;
 - submit the Price Response Form in excel format and not any other format;
 - submit the works programme (Gantt Chart) in MS project file & PDF, if required; and

- submit the Contract Amendments and Particulars in excel format;
 - submit the Non-Price Response Form(s) and any accompanying documents in one PDF document.
- 4.2 The Tender Response Forms must be fully completed, and include all supporting documents and materials required by these Conditions of Tender, Specification and the Tender Response Forms.
- 4.3 The Tenderer must ensure its Tender Response Forms are submitted in the correct format or the Offer may be excluded from further consideration as it fails to meet minimum content and format requirements.
- 4.4 Offers that cannot be effectively evaluated because they are incomplete or corrupt may be excluded from further consideration. The Principal takes no responsibility for any documents or files which become incomplete or corrupt during transmission or upload into the Electronic Tender Box.
- 4.5 Offers submitted to the Principal which direct the Principal to another host website for collection, review or evaluation of documents may be excluded from further consideration.
- 4.6 The Tender Response Forms must contain the Tenderer's:
- full name; and
 - Australian Business Number; and
 - address and email address for the service of notices.
- 4.7 If the Tenderer operates as a firm, the Tender Response Forms must contain:
- the full names and addresses of each member of the firm;
 - the business name under which the firm trades;
 - the firm's address and email address for the service of notices; and
 - the firm's Australian Business Number.
- 4.8 If the Tenderer is a corporation, the Tender Response Forms must contain details of the corporation's:
- name;
 - business name (if applicable);
 - Australian Business Number;
 - registered office;
 - address and email address for the service of notices; and
 - the name, telephone number and address (if different from the address for service of notices) of a natural person who is authorised by the corporation to represent it in relation to the Tender.
- 4.9 If the Tenderer is a consortium or a joint venture, the Tender Response Forms must contain details of:
- the name of each member;
 - the structure of the consortium or joint venture, including the proposed managerial structure;
 - the representative of the consortium or joint venture who has authority to bind the Tenderer and each of the persons in the consortium or joint venture;
 - the role to be played by each member in complying with the terms and conditions of the Contract; and
 - in the case of a consortium, the member who is to be principal contractor on behalf of the consortium.
- 4.10 The Tender Response Forms must be duly executed in a manner that binds:
- if the Offer is submitted by one (1) Tenderer — the Tenderer; or
 - if the Offer is submitted by more than one (1) Tenderer — each Tenderer.
- 4.11 The Contract Price or Rates in the Tender Response Forms must be:
- in Australian dollars; and
 - unless otherwise specified in the Tender Response Forms, GST exclusive.
- 4.12 It is recommended that the Tenderer:
- number consecutively each page of its Tender; and
 - include an index in the Tender.
- 4.13 The identity of the Tenderer is fundamental to the Principal. For the purposes of a Tenderer's Tender, the Tenderer is the person, persons, corporation or corporations:
- who is named as the Tenderer in the Tender Response Forms; and
 - who has duly executed the Tender Response Forms in a manner that binds the Tenderer.

5 Alternate Proposals

- 5.1 Unless stated otherwise in the Invitation to Offer, alternative proposals may be submitted in addition to conforming Tender. The Principal is not required to consider alternative proposals (and at the time of the Invitation to Offer has no intention of doing so) where the Invitation to Offer provides that alternative proposals are not to be submitted.
- 5.2 Alternative proposals may be submitted in addition to conforming tenders. The alternative proposal must:
- clearly set out the benefits of the proposal and how it differs from the conforming Tender; and
 - not constitute a substantial variation but satisfy the basic commercial and performance objectives, technical and legal requirements.
- 5.3 Each alternative proposal must expressly state in detail the extent to which the Tender:

- (a) does not comply in any respect with the requirements of the Tender Documents (including these Conditions of Tender) or relies upon any Assumptions;
 - (b) is for the provision of Goods, Services or the carrying out of works of the Contract Work on terms which differ from the terms of the Tender Documents (including the Contract); and
 - (c) will benefit or disadvantage the Principal by the alternative proposal (including the effect on the tendered price),
- and, except to the extent expressly stated in the Offer, the Offer shall be deemed to be for the provision of Goods, Services or the carrying out of works of the Contract Work on the terms of the Tender Documents (including the Contract).
- 5.4 If an alternative proposal and a conforming Offer are submitted from the same Tenderer, they must be submitted on a separate Tender Response Forms.
 - 5.5 Alternative proposals may be deemed as an alternative proposal if the Tenderer has failed to supply any of the information required by these Conditions of Tender, does not comply with any of the requirements of the Conditions of Tender or has been lodged subject to any departures, conditions or qualifications.
 - 5.6 If more than one conforming Offer is lodged, each Offer must be accompanied by a clear summary of all points of difference between each conforming Tender.
 - 5.7 The Principal will not be obliged:
 - (a) to consider any Offer that does not comply with the requirements of these Conditions of Tender; and
 - (b) to provide reasons for a decision not to consider any Offer that does not comply with the requirements of these Conditions of Tender.
 - 5.8 If a Tenderer lodges an alternative proposal without lodging a conforming Offer or lodges an alternative proposal where the Invitation to Offer provides alternative proposals are not to be submitted the Principal may, in its sole and unfettered discretion:
 - (a) refuse to consider the alternative proposal; or
 - (b) commence to consider the alternative proposal, and to do all of the things described in Clause 9 & 12, but subsequently cease to consider it at any time.
 - 5.9 If the Tenderer proposes any deviations to the Request for Tender, the Tenderer must provide sufficient information in the relevant section of the Tender Response Forms to permit evaluation of the proposed deviations including detailed reasons why the deviation is sought by the Tenderer and the Tenderer's alternative drafting (if applicable).
 - 5.10 An Offer with proposed deviations may be deemed an alternative proposal.
 - 5.11 Acceptance of a deviation will be at the sole and unfettered discretion of the Principal, as evidenced in any Contract entered into by the Principal and Tenderer.

6 Lodgement of Tender

- 6.1 Tenders must be submitted, and will only be accepted by the Principal if submitted, in electronic format via the Electronic Tender Box before the Closing Time.
- 6.2 Any difficulty uploading should be urgently reported to the Electronic Tender Box helpline.
- 6.3 Failure to comply with the requirements set out in clause 6.1, may result in the Offer be excluded from any evaluation.
- 6.4 Where a Tenderer lodges an alternative proposal, the Tenderer must do so in accordance with Clause 5.
- 6.5 The Principal may extend the Closing Time in its sole and unfettered discretion, before the closing of tenders.
- 6.6 The Principal will not accept late tenders. The Electronic Tender Box will automatically close at the Closing Time, and submissions will not be accepted in any other method.
- 6.7 A Tenderer must not alter the Tender Response Forms unless required by these Conditions of Tender.
- 6.8 An Offer is irrevocable and remains valid and open for acceptance by the Principal for the period set out in the Invitation to Offer (withdrawal of an Offer during the validity period is only permissible when in writing to the Principal).
- 6.9 Each submission constitutes an Offer by the Tenderer to the Principal to perform the Supply required under, and otherwise to satisfy the requirements of, the Specification on the terms and conditions of the Contract.
- 6.10 In submitting its Offer, the Tenderer acknowledges and agrees that all details submitted in the Tender Response Forms may be validated by the Principal during the Contract Work.

7 Insurances and licensing

- 7.1 In submitting its Offer, the Tenderer acknowledges and agrees that the insurance policies outlined in General Conditions of Contract must, at the

Tenderer's expense, be effected and maintained for the life of the contract and any applicable warranty period that may apply as outlined in the General Conditions of Contract.

- 7.2 Where any part of the Supply under a Contract is such that the *Queensland Building and Construction Commission Act 1991* (Qld), or other legislation, requires the Contractor and/or proposed subcontractors to be licensed or registered, the Tenderer must submit evidence of the Tenderer's licensing or registration in the Tender Response Forms and, to the extent the Tenderer has not obtained all licenses and registrations before it submits its Tender, a list of all outstanding licenses and registrations which will be obtained, if the Tenderer becomes the successful Tenderer, before entering into any Contract with the Principal.
- 7.3 If, at the time of submitting its Tender, the Tenderer does not have the requested licenses, registration or insurance cover or to the specified amount, the Tenderer must, without limiting this Clause 7 indicate in the Tender Response Forms its willingness and ability to effect such licenses, registrations or insurances at its own expense.
- 7.4 If the successful Tenderer does not have the requested licenses, registration or insurance cover or to the specified amount, at the time the Principal goes to award the Contract, a Contract will not be entered into until such time as the requested licenses, registration or insurance cover has been evidenced by the Principal.

8 Opening of Tenders

- 8.1 Tenders will be opened after the Closing Time.
- 8.2 Tenders will not be opened publicly.

9 Tender Evaluation Process

- 9.1 Without limiting the criteria and weightings the Principal may apply in evaluating Tenders received, the Principal will have regard to the sound contracting principles in section 104 of the *Local Government Act 2009* (Qld), namely:
 - (a) value for money;
 - (b) open and effective competition;
 - (c) the development of competitive local business and industry;
 - (d) environmental protection; and
 - (e) ethical behaviour and fair dealing.
- 9.2 Each Offer will be evaluated using the information provided in the Tender Response Forms.
- 9.3 If a Tender Response Form for an Offer is not fully completed or does not include all supporting documents and materials required by these Conditions of Tender or the Tender Response Forms, the Offer may be rejected.
- 9.4 In evaluating Tenders, the Principal may:
 - (a) require presentations from Tenderers;
 - (b) conduct interviews with Tenderer's staff and subcontractors;
 - (c) contact Tenderers' referees;
 - (d) negotiate with any number of Tenderers;
 - (e) investigate a Tenderer's structure and management, and that of any relevant subsidiary or related corporation;
 - (f) obtain such other information it requires and make its own assessment of the Tenderer's ability to comply with the terms and conditions of the Contract at the tendered price; and
 - (g) verify that the Tenderer holds all necessary permits, licences, approvals and certifications necessary to enable it lawfully to comply with the terms and conditions of the Contract.
- 9.5 Qualitative criteria for the Request for Tender are specified in the Invitation to Offer. The qualitative criteria may be weighted to indicate the relative degree of importance that the Principal places on the technical aspects of the Supply. Each Tenderer must address each of the qualitative criteria specified in the Tender Response Forms. If a Tenderer fails to address any of the qualitative criteria in the Tender Response Forms, its Offer may be regarded as an alternative proposal and may be rejected.
- 9.6 The Tenderer acknowledges that the Principal is not bound to issue the Contract to the Tenderer who is ranked first in such qualitative criteria and may conduct a sensitivity analysis in accordance with the criteria listed in Clause (a) and the evaluation process contained in the Invitation to Tender to reassess other offers.
- 9.7 Irrespective of whether it is stipulated as being part of the evaluation process, evaluating Tenders may also involve, but is not limited to, reference checks, financial viability checks, credit checks, company searches and other relevant checks as necessary including reference to any publically available materials and any other basis for evaluation that the Principal sees fit to apply.
- 9.8 The Principal may obtain information about the Tenderer relevant to the evaluation criteria that may be held by any Government Department or Instrumentality and take the information into account in assessing the offer.

9.9 Each Tenderer must give the Principal any cooperation and assistance reasonably requested of the Tenderer to facilitate consideration of their Tender.

10 Clarifications and Variations

10.1 The Principal may issue to Tenderers no later than 4 Business Days before the Closing Time:

- (a) additional information; and
- (b) information clarifying or correcting information previously provided, to assist them in preparing their Tenders.

10.2 If the Principal issues information to Tenderers under Clause 10.1, each Tenderer must take the information into account in the preparation of its Tender.

10.3 After the Closing Time, the Principal may (provided that no competitive advantage is offered to an individual Tenderer):

- (a) request clarification or further information from any Tenderer; and
- (b) negotiate with one or more Tenderers upon any aspect of their Tenders without any obligation to notify other Tenderers that it is doing so.

11 Confidentiality

11.1 The Tenderer:

- (a) acknowledges that the Confidential Information is sensitive and valuable, and will remain at all times the property of the Principal;
- (b) must not use the Confidential Information for any purpose other than preparing its Tender;
- (c) must not copy any material comprising or containing Confidential Information, other than where (and then only to the extent that) copying is necessary to enable it to prepare its Tender; and
- (d) must not disclose the Confidential Information or this Tender to any media organisation, nor post or publish the Confidential Information or Tender on any social media platform of any kind.

11.2 The Tenderer must ensure that access to the Confidential Information is only provided to the Relevant Persons to the extent necessary to enable the Offer to be prepared. The Tenderer must not disclose the Confidential Information to any other third party for any purpose whatsoever without the prior written consent of the Principal.

11.3 The consent of the Principal to disclosure of the Confidential Information by the Tenderer may be given or withheld on such terms and conditions as the Principal considers appropriate.

11.4 The Tenderer's obligation under this Clause 11 continues after closure of Tenders and any award of Contract.

11.5 The Principal reserves the right to retrieve from a Relevant Person any Confidential Information held by that person.

11.6 Clause 11.5 is subject to the Principal having given written notice to the Tenderer in writing that the Relevant Person is to be denied access to the Confidential Information.

11.7 Failure or delay by the Principal in enforcing strict compliance with this Clause 11 or pursuing a remedy under this Clause 11 will not constitute a waiver or implied variation of the entitlement or remedy.

11.8 This Clause 11 will not apply to an item of Confidential Information where the Tenderer can establish that:

- (a) the item has been transferred to the public domain through no fault of the Tenderer;
- (b) the item was already in the Tenderer's possession when it was supplied or made available by the Principal and not acquired directly or indirectly from the Principal; or
- (c) it has received from the Principal written notification that the Principal no longer requires the Tenderer to keep the item confidential.

11.9 In addition to any other remedies at law or in equity, if a Tenderer has breached this clause 11, the Principal may, at its discretion, immediately exclude that Tenderer from further consideration for the Supply and reject any Tender or Offer that has been lodged.

12 Acceptance of Tender

12.1 The Principal is not obliged, pursuant to section 228 of the *Local Government Regulation 2012* (Qld), to accept the lowest or any Offer and may accept the Offer most advantageous to it.

12.2 Unless the Principal expressly agrees otherwise:

- (a) no Offer shall be taken to be accepted until the Principal notifies the Tenderer in writing that its Offer has been accepted; and
- (b) the successful Tenderer shall pay and indemnify the Principal for the stamp duty (if any) payable in connection with the acceptance of its tender.

12.3 The Principal reserves the right to accept or reject an Offer in part or in whole.

12.4 If these Conditions of Tender form part of a Request for Tenders for a Panel Arrangement under section 231-233 of the *Local Government Regulation 2012* (Qld):

(a) acceptance of the Offer of the Tenderer:

- (i) is selection of the Tenderer by the Principal as a Supplier or Contractor for the Panel Arrangement; and
- (ii) merely results in the Tenderer being selected for the purpose of the Principal's Panel Arrangement for the Supply specified in the Specification;

(b) the Tenderer acknowledges that:

- (i) 1 or more Tenderers may, from time to time, be selected by the Principal for the Panel Arrangement for the Supply specified in the Specification; and
- (ii) the Principal may enter into the Preferred Supplier Arrangement under section 233 of the *Local Government Regulation 2012* (Qld) for a term of more than 2 years (24 months) only if the Principal is satisfied that it will obtain better value for doing so; and

(c) the Tenderer acknowledges and agrees that:

- (i) the selection of the Tenderer for the purpose of the Panel Arrangement is effective for a term commencing on the date on which the Principal accepts the Offer of the Tenderer (by Letter of Acceptance) under Clause 12.2 and expiring on the Expiry Date;
- (ii) the selection of the Tenderer for the purpose of the Panel Arrangement is not an order (Purchase Order) for the supply of any quantity of the whole, or any part, of the goods, services and works (as applicable) specified in the Specification;
- (iii) the Principal may, in its sole and unfettered discretion, but without being obliged to do so, from time to time during the term specified in Clause 12.4(c)(i), order (by Purchase Order) from the Tenderer goods, services and works (as applicable) in the nature of the Supply specified in the Specification; and
- (iv) the Principal may, by giving written notice to the Tenderer, cancel the selection of the Tenderer for the purpose of the Panel Arrangement for the poor performance of the Tenderer.

12.5 No contract will come into force between the Tenderer and the Principal unless and until the parties execute the Contract.

12.6 The Principal may, pursuant to section 228(7) of the *Local Government Regulation 2012* (Qld), either before or after the Closing Time, invite all tenderers who submitted an Offer to change their Offer to take account of a change to the Specifications, before making a decision on the tenders. If the change in the Specifications results in additional or alternative tenderers being able to submit a Tender, consideration will be given to withdrawing the Request for Tender and re-advertising.

12.7 The Principal is not required to provide feedback to any unsuccessful Tenderer.

13 Right to Information and Disclosure

13.1 The *Right to Information Act 2009* (Qld) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including Local Governments).

13.2 The *Right to Information Act 2009* (Qld) requires that documents be disclosed upon request, unless the documents are exempt or, on balance, disclosure is contrary to the public interest.

13.3 Information provided by the Tenderer is potentially subject to disclosure to third parties pursuant to the *Right to Information Act 2009* (Qld).

13.4 If disclosure under the *Right to Information Act 2009* (Qld), or general disclosure of information provided by the Tenderer, would be of substantial concern to the Tenderer, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, including Personal Information, this should be indicated by the Tenderer in its Tender. The Principal cannot guarantee that any information provided by the Tenderer will be protected from disclosure under the *Right to Information Act 2009* (Qld).

13.5 The Tenderer must familiarise itself with the relevant provisions of the *Right to Information Act 2009* (Qld) dealing with the requirements for disclosure of information by agencies, and the grounds on which access to information may be refused.

13.6 The Principal accepts no responsibility for the accuracy or adequacy of any information it provides to Tenderers concerning the content or effect of the *Right to Information Act 2009* (Qld).

13.7 The Principal reserves the right to disclose, by publication by means of media of its choosing upon award of any contract details of the name and address of the Contractor, a description of the Supply, the commencement date of the Contract and the Contract Price or value.

13.8 Without limiting Clause 13.7, the Tenderer acknowledges that if section 237 of the *Local Government Regulation 2012* (Qld) applies to a Contract, the Principal will be required to disclose the information required by that section concerning the Contract.

13.9 The Principal will be solely responsible for all media communications in respect to the Request for Tender, the Tender process and the subsequent award of any Contract. A Tenderer must not issue any advertisement, information, publication, document or article for publication or any statement to the media concerning the Request for Tender, the Tender process or the subsequent award of any Contract without the consent of the Principal. The Tenderer must refer to the Principal any media enquiries concerning the Request for Tender, the Tender process or the subsequent award of any Contract.

14 Ownership of Tenders

14.1 Each Tender Response Form (including all supporting documentation and materials submitted by a Tenderer as part of, or in support of, a Tender) becomes the property of the Principal on submission and will not be returned to the Tenderer.

14.2 However, the Tenderer shall retain copyright and other Intellectual Property Rights in respect of the Offer except to the extent specified in the Contract.

14.3 The Tenderer licences the Principal and its officers, employees, agents, advisers and representatives to copy, adapt, amend, disclose or do anything else necessary (in the Principal's sole and unfettered discretion) to all material (including that which contains Intellectual Property Rights of the Tenderer or other persons) contained in its Offer for the purpose of the Tender process, including evaluation of the Tender, performing obligations and exercising rights and discretions of the Principal under the Request for Tender and negotiating a potential Contract with the successful Tenderer.

15 Information Privacy

15.1 The Tenderer is to comply with the *Information Privacy Act 2009* (Qld).

15.2 By submitting a Tender, the Tenderer warrants that it has obtained the consent of each individual whose Personal Information is included in the Offer for:

- (a) the inclusion of their Personal Information in the Tender;
- (b) the use of the Personal Information by the Principal for the purpose of evaluating and awarding the Tender; and
- (c) the disclosure of the Personal Information to other parties (including professional advisors) as may be involved in assisting the Principal with the evaluation of the Tender.

15.3 The Tenderer must indemnify the Principal against any claim, damage or loss (including legal costs and expenses) that the Principal may incur as a consequence of a breach by the Tenderer of the warranty in Clause 15.2.

15.4 Any Personal Information exchanged between the Tenderer and the Principal must be dealt with in accordance with the *Information Privacy Act 2009* (Qld).

15.5 The Tenderer must immediately notify the Principal upon becoming aware of any breach of this Clause 15.

15.6 This clause survives the expiry or termination of the Request for Tender.

16 Principal's Limitation of Liability

16.1 Subject to Clause 16.2, the Tenderer accepts all risk and cost in relation to it and its Personnel's participation in any aspect of the Tender process (including the performance of all obligations under these Conditions of Tender), or other process derived from the Request for Tender.

16.2 To the maximum extent permitted by law, the maximum aggregate liability of the Principal to the Tenderer for any breach of these Conditions of Tender or any other act, default or omission of the Principal or its Personnel (including negligence, breach of any statute or any other duty or obligation in equity or at law), irrespective of how serious the breach or how important the term that is breached, is limited to \$10. This Clause survives the expiry or termination (for any reason) of the Request for Tender.

16.3 Except for the limited extent of liability under Clause 16.2, and without limiting any other provision of these Conditions of Tender, the Tenderer:

- (a) releases the Principal and its Personnel (**Released Persons**) from; and
- (b) indemnifies the Released Persons against, any Claim of the Tenderer or its Personnel, arising out of or in relation to:
- (c) the information provided to the Tenderer by or on behalf of the Principal (including the Relevant Documents);
- (d) the matters described in Clause 2.7; or
- (e) the acts, defaults or omissions of any of:
 - (i) the Released Persons (including the Principal, exercising any rights or discretions, or taking any action as a result of the acts, defaults or omissions of any person, including third parties);
 - (ii) the Tenderer; and
 - (iii) the Tenderer's Personnel,
 arising out of or in relation to:

(f) these Conditions of Tender or the information provided to the Tenderer by or on behalf of the Principal;

(g) the Tender process or any other process derived from these Conditions of Tender; or

(h) the matters described in Clause 2.7,

and this Clause 16 may be pleaded by the Released Persons as a bar to any proceedings commenced by the Tenderer against the Released Persons in relation to the things described in this Clause 16. This clause survives the expiry or termination (for any reason) of these Conditions of Tender.

16.4 The Tenderer indemnifies the Released Persons from and against all expenses (including legal fees on an indemnity basis and expert's fees), damages and losses suffered or incurred by the Released Persons in relation to:

- (a) the Tenderer's breach of Clauses 18, 19, 20 and 21; and
- (b) the Released Persons exercising its rights under the paragraph above or the Released Persons defending any proceedings relating to the exercise of its rights under the paragraph above.

17 In-House Tenders

17.1 The Principal will not submit an in-house Tender.

18 Collusive Tendering

18.1 In submitting its Tender, the Tenderer warrants to the Principal that, except as expressly disclosed in Tender Response Forms that:

- (a) the Offer was not prepared with any consultation, communication, contract, arrangement or understanding with any competitor (including any other Tenderers) regarding:
 - (i) prices;
 - (ii) methods, factors or formulae used to calculate prices;
 - (iii) the intention or decision to submit or not to submit a Tender;
 - (iv) the submission of an alternative proposal;
 - (v) the quality, quantity, specifications or delivery particulars of the Supply to which the Request for Tender or Offer relates; and
 - (vi) the terms of its Offer or a competitor's Tender; and
- (b) it has not (and will not during the Tender process):
 - (i) enter into any contact, arrangement or understanding with any other Tenderer or any trade, industry or other association to the effect that the Tenderer, if its Offer is successful, will confer any benefit on any other person;
 - (ii) use any information in preparing its Offer that it or its Personnel have obtained unlawfully;
 - (iii) provided any benefit (including money) directly or indirectly to, or entered into any contract, arrangement or understanding to provide any benefit (including money) directly or indirectly to any competitor (including any other Tenderer) relating in any way to the Request for Tender or Tender;
 - (iv) received any such benefit directly or indirectly, or entered into any contract, arrangement or understanding to receive any such benefit directly or indirectly from any competitor (including any other Tenderer) relating in any way to the Request for Tender or Tender;
 - (v) engage in any conduct in relation to these Conditions of Tender or the Tender process that is misleading or deceptive; or
 - (vi) consulted, communicated or entered into any contract, arrangement or understanding to provide any benefit (including money), whether directly or indirectly, to a trade, industry or other association (above the published standard fee) relating in any way to the Request for Tender or Tender; and
 - (vii) the Tenderer and all corporations and persons associated with the Tender, including directors and senior management, are not and have never been subject to proceedings relating to anti-competitive conduct in Australia or overseas.

18.2 The Principal reserves the right to:

- (a) report suspected collusive or anti-competitive conduct on the part of a Tenderer to the appropriate authority; and
- (b) provide the authority with any relevant information about each of the Offers of the Tenderer and the conduct of the Tenderer in relation to the Offer of the Tenderer.

19 Conflict Of Interest

19.1 A Tenderer must not, and must ensure that its employee, agents, and advisers do not, place themselves in a position that may or does give rise to an actual, potential or perceived conflict of interest between the interests of the Principal and the Tenderer's interest during the Tender process.

19.2 If during the Tender process a conflict of interest arises, or appears likely to arise, the Tenderer must notify the Principal immediately in writing and take such steps as the Principal may reasonably require to resolve or otherwise deal with the conflict. If the Tenderer fails to notify the Principal or is unable or unwilling to resolve or deal with the conflict as required, the Offer may be excluded from further consideration.

20 Canvassing

20.1 A Tenderer must not, and must ensure that the Tenderer's Personnel do not, contact the Principal or any of its Personnel (including consultants, board

members, Councillors, elected members or representatives of the Principal) for the purpose of:

- (a) exchanging any information about the Supply, the selection for the Supply, the Tender process, the Tender Documents or any Offer or Tender; or
- (b) supporting the Tenderer's prospects of being selected as the successful Tenderer.

20.2 The Tenderer must not contact any media organisation nor post or publish any information referred to in clause (a) on any social media platform of any kind.

20.3 The Tenderer warrants that no unauthorised or undisclosed contact has been or will be undertaken by the Tenderer or the Tenderer's Personnel (whether before or after the commencement of these Conditions of Tender) that would breach clause 20.1.

20.4 Where the Tenderer becomes aware of any actual or potential breach of clause 20.1 by it or its Personnel, it must immediately notify the Contact Person in writing.

20.5 In addition to any other remedies available at law or in equity, if a Tenderer has breached this clause 20, the Principal may, at its discretion, immediately exclude the Tenderer from further consideration for the Supply and reject any Tender or Offer that has been lodged.

20.6 This clause survives the termination or expiry of these Conditions of Tender.

21 Inducement, Coercion and Improper Assistance

21.1 The Tenderer (including its Personnel) must not:

- (a) offer any form of inducement or reward to a Councillor of the Principal or the Principal's Personnel, exhibit undue pressure on (including any duress) or otherwise attempt to influence or persuade the Principal or its Personnel in connection with this Tender process including, but not limited to, the evaluation of Tenders or the award of a Contract; and
- (b) solicit any of the Principal's Personnel to enter into the employment of either the Tenderer or its Personnel, or contract with the Tenderer or its Personnel, for the Supply.

21.2 The Principal may exclude an Offer from further consideration where the Principal considers that it has been compiled:

- (a) with the Improper Assistance of a current or former employee of the Principal;
- (b) with the utilisation of information unlawfully obtained;
- (c) in breach of an obligation of confidentiality of the Principal; or
- (d) contrary to these Conditions of the Tender.

22 Principal Discretions

22.1 Any right, discretion, power, assessment, determination or decision that the Principal has under or in connection with these Conditions of Tender may be exercised or made:

- (a) in its sole and unfettered discretion (without being under any obligation to do so);
- (b) conditionally or unconditionally;
- (c) without being required to give reasons; and
- (d) without the need to act for the benefit of the Tenderer.

22.2 Without limiting its rights or discretions under these Conditions of Tender or otherwise at law, the Principal may at any time do any of the following:

- (a) terminate or suspend the Tender process at any time before entering into the Contract, whether before, on or after the Closing Time by notice in writing to the Tenderers and either:
 - (i) commence a new Tender process for the Supply after terminating this Tender process; or
 - (ii) carry out all or any part of the Supply in a manner that the Principal sees fit, either itself or by engaging another to do so after terminating this Tender process;
- (b) before the Closing Time, issue to all Tenderers any addendum (including in response to a Tender);
- (c) carry out any other procurement process for the Supply;
- (d) accept portions of the Tender, and of any other Tender;
- (e) carry out any part of the Supply itself or have other persons carry out some or all of the Supply whether or not they were invited to, or did, submit a Tender;
- (f) cease negotiations or discussions with any Tenderer at any time;
- (g) pre-qualify, shortlist or proceed to negotiate with one or more Tenderers or other persons, or enter into discussions with one or more Tenderers or other persons, in respect of the Supply, and without any obligation to notify other Tenderers that it is so proceeding;
- (h) following a sensitivity analysis in accordance with the Invitation to Offer, award the Contract to a Tenderer, despite that Tenderer's Offer not being ranked first in the stated qualitative criteria;
- (i) consider or accept, or refuse to consider or accept, any Offer or to shortlist any Offer received (whether or not a conforming Offer or an

alternative proposal), if the Tenderer has failed to comply with these Conditions of Tender or Tender process;

- (j) seek and consider, or not consider, additional Tenders from (on the same or different terms), or re-offer the Supply with, all or any of the Tenderers who have submitted a Tender, or any other person (whether or not they were invited to submit or did submit a Tender);
 - (k) provide additional information to any or all Tenderers;
 - (l) by notice, change any of the Request for Tender, the Tender process, the Supply specified in the Specification or any other aspect of the Request for Tender in any way; and
 - (m) before the end of the Tender process:
 - (i) invite any other person to participate as a Tenderer in the Tender process; or
 - (ii) accept a substitution of, withdrawal of, or addition to any of the entities comprising a Tenderer, with the approved entities together comprising the Tenderer for the purpose of the Request for Tender.
- 22.3 Despite anything in the Request for Tender to the contrary:
- (a) the Principal is not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other government agency in the proper exercise and performance of any of its executive or statutory rights or duties;
 - (b) nothing in the Request for Tender has the effect of constraining the Principal or placing any fetter on its discretion to exercise or not to exercise any of its executive or statutory rights or duties; and
 - (c) each Tenderer will not be entitled to make any Claim against the Principal relating to any exercise or failure of the Principal to exercise its executive or statutory rights or duties.

23 General

23.1 Any Offer submitted in response to the Request for Tender will be governed by and construed in accordance with the laws of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of Queensland.

23.2 The Request for Tender supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.

23.3 To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, has no effect except to the extent expressly set out or incorporated by reference in the Request for Tender.

23.4 A right under the Request for Tender may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

23.5 A clause or part of a clause of the Request for Tender that is illegal or unenforceable may be severed from the Request for Tender and the remaining clauses or parts of the clause of the Request for Tender continue in force.

23.6 The Principal need not incur any expense before enforcing an indemnity under the Request for Tender.

24 Application of Conditions of Tender

24.1 Except to the extent the Principal expressly agrees otherwise, these Conditions of Tender shall continue to apply to any process which the Principal may undertake (including following the close of tenders under the initial Tender process) in connection with the selection of the successful Tenderer or the award of a Contract (including without limitation, any process involving the retendering of the Contract Work, shortlisting of tenders or further negotiations with any of the Tenderers).

25 Building and Construction Industry WHS Accreditation Scheme

25.1 Clause 25 and clause 26 applies if:

- (a) the Supply involves the engagement of a Builder or a Project Manager; and
- (b) the Building Work is being Indirectly Funded by the Australian Government; and
- (c) the Threshold Amounts are satisfied; and
- (d) the Price and Approved Expenses for the Building Work is \$4 million (GST inclusive) or more.

25.2 The Australian Government is committed to improving work health and safety outcomes in the building and construction industry. An important initiative to achieve this is the Scheme. The Scheme is established by the *Building and Construction Industry (Improving Productivity) Act 2016* and specified in the *Fair Work (Building Industry - Accreditation Scheme) Regulation 2016* (Cth).

25.3 The Scheme accreditation requirement applies to all Building Work that is being Indirectly Funded by the Australian Government.

25.4 Only persons who are accredited under the Scheme are able to contract for Building Work being Indirectly Funded by the Australian Government.

25.5 If the Supply is for the engagement of a Builder, the successful Tenderer must:

- (a) be accredited under the Scheme when entering into the Contract;
 - (b) maintain accreditation while the Building Work is being carried out; and
 - (c) comply with all conditions of Scheme accreditation and the National Construction Code performance requirements in relation to building materials.
- 25.6 If the Supply is for the engagement of a Project Manager, the successful Tenderer must ensure that:
- (a) all contracts for Building Work are only entered into with Builders who are accredited under the Scheme;
 - (b) the Builders contracted to undertake the Building Work maintain accreditation while carrying out the Building Work; and
 - (c) the Builders comply with all conditions of Scheme accreditation and the National Construction Code performance requirements in relation to building materials.
- 25.7 For the purposes of this Clause 25, the terms:
- (a) **Australian Government** means the Commonwealth (Australian Government) or a Commonwealth authority;
 - (b) **Builder** has the meaning given in section 43(8) of the *Building and Construction Industry (Improving Productivity) Act 2016*. Section 26(1)(f) of the *Fair Work (Building Industry - Accreditation Scheme) Regulation 2016* (Cth) outlines provisions applying to joint venture arrangements that include accredited and unaccredited Builders;
 - (c) **Building Work** has the meaning given in section 6 of the *Building and Construction Industry (Improving Productivity) Act 2016*;
 - (d) **Indirectly Funded** means funding provided by the Australian Government through grants and other programs, including:
 - (i) building projects where the Australian Government provides money through a funding agreement or grants, for example, to the Principal who then may contract with persons who will undertake the Building Work or persons who will arrange for the Building Work to be carried out; or
 - (ii) building projects that the Principal, who receives Australian Government funding, facilitates by agreement;
 - (e) **Project Manager** means a person who administers some or all of the responsibilities of the Principal in the delivery of a project, including arranging for Building Work to be carried out utilising Australian Government funding, including a developer or consortium;
 - (f) **Scheme** means the Australian Government Building and Construction Industry Work Health and Safety Accreditation Scheme described in section 43 of *Building and Construction Industry (Improving Productivity) Act 2016*; and
 - (g) **Threshold Amounts** means:
 - (i) the value of the Australian Government contribution to the project is at least \$6 million and represents at least 50 per cent of the total construction project value; or
 - (ii) the Australian Government contribution to a project is \$10 million or more, irrespective of the proportion of Australian Government funding.
- Where the above terms are amended or replaced pursuant to any legislation, then those terms above will be amended or replaced and this Clause 25 will be amended and read accordingly.

26 Queensland Code

- 26.1 In addition to terms defined in these Conditions of Tender, terms used in this Clause 26, have the same meaning as is attributed to them in the Queensland Code of Practice for the Building and Construction Industry (**Queensland Code**)
- 26.2 The Queensland Code (and any implementation guidelines which may be introduced) apply to the project the subject of the Request for Tender. By submitting a Tender, the Tenderer acknowledges and agrees that:
- (a) it is aware that the Queensland Code applies to the Request for Tender and is an essential condition to being considered for the Contract;
 - (b) it is deemed to have read and understood the Queensland Code and the obligations they impose;
 - (c) it will comply with the Queensland Code on this project if selected as the successful Tenderer;
 - (d) it will agree, if selected as the successful Tenderer, to contractual terms to give effect to the Queensland Code and mechanisms to ensure their compliance and enforcement;
 - (e) any party which is precluded from performing any part of the Supply to which the Queensland Code applies is excluded from consideration in the Tender process; and
 - (f) it will comply with the Queensland Code in respect of any of its building and construction work on and from the date of submitting its Tender.
- 26.3 The Tenderer acknowledges that by submitting an Offer it agrees to the Principal taking steps to investigate claims and assertions made by the

Tenderer in any documents submitted before any Contract is awarded. The Tenderer acknowledges and agrees that co-operation with the Principal is an essential component of the Tender process. Co-operation by the Tenderer will include allowing the Principal and those authorised by the Principal to:

- (a) access premises and sites controlled by the Tenderer or its related entities;
 - (b) monitor and investigate compliance with the Queensland Code, including inspecting and copying relevant records and documents;
 - (c) inspect any work, material, machinery, appliance article or facility; and
 - (d) interview any person, as is necessary to investigate the Tenderer's claims or to demonstrate the Tenderer's current or, where relevant, past compliance with the Queensland Code during the Tender process.
- 26.4 Notwithstanding any other provision of these Conditions of Tender, the Tenderer agrees and consents to the disclosure of information concerning the Tenderer's compliance with the Queensland Code, including the disclosure of details of past and present conduct relating to the Queensland Code and the National Construction Code, as varied from time to time, including whether or not sanctions have been imposed on the Tenderer or any of its related entities by the Commonwealth or any State or Government agency. This consent is given to the State of Queensland, including its agencies, Ministers (and its authorised personnel) and the Principal for purposes including monitoring and investigating compliance and ensuring, facilitating and promoting compliance with the Queensland Code.
- 26.5 Where the Tenderer proposes to subcontract a part of the Supply, and it is authorised to do so, it agrees that it will ensure, through contract, that each subcontractor or consultant agrees to:
- (a) the items in clauses 26.2 and 26.4 in respect of the relevant subcontractor or consultant; and

where a nominated subcontractor or consultant is proposed in a Tender, that nominated party co-operates with Queensland Government authorised personnel during the Tender process for the purposes outlined in clause 26.4

27 Definitions

- 27.1 In these Conditions of Tender, except where the context otherwise requires:
- Act** means means an Act passed by the Commonwealth Parliament or the Queensland Parliament and includes subordinate legislation under an Act.
- Assumptions** means any assumption in relation to the Contract, the Site, the Contract Work or the Tender Documentations.
- Australian Standard Contract** has the meaning given in clause 2.11.
- Business Day** means a day that is not:
- (a) a public holiday in the Fraser Coast Region, Queensland; or
 - (b) Saturday, Sunday or 27, 28, 29, 30 or 31 December.
- Claims** means any claim by the Tenderer for, or entitlement of the Tenderer to:
- (a) any adjustment to the Contract Price or other consideration payable by the Principal for the Supply in relation to the Tender process;
 - (b) any costs, expenses, damages, liabilities or other amounts of whatever nature against the Principal or any of the Principal's employees, agents or advisors; or
 - (c) any relief from any of the Tenderer's obligations or liabilities under the Request for Tender or the Contract,
- whether under this Request for Tender, the Contract, the Tender process or otherwise at law or in equity (including under any statute or in tort (including negligence)).
- Clause** means a clause within these Conditions of Tender.
- Closing Time** means the time and date specified in the Invitation to Offer.
- Conditions of Tender** means these Conditions of Tender.
- Confidential Information** means all information:
- (a) of, or supplied or made available by, the Principal; and
 - (b) created by the Tenderer, from the material supplied or made available to the Tenderer by the Principal for the purposes of submitting the Tender,
- that:
- (c) is by its nature confidential;
 - (d) is specified as confidential, including the information specified in the Request for Tender;
 - (e) the Tenderer or a potential Tenderer (including any entity that obtains the information in the Request for Tender but does not submit a Tender) knows or ought to know is confidential, and includes information:
 - (i) comprised in or relating to any Intellectual Property Rights of the Principal;
 - (ii) concerning the internal management and structure, Personnel, processes and policies, commercial operations, financial arrangement or affairs of the Principal;
 - (iii) that contains any technical information, ideas, concepts, know-how, data, drawings, specifications or designs;
 - (iv) that is of actual or potential commercial value to the Principal; and
 - (v) relating to the clients or suppliers of the Principal.

Confidential Information does not include information which:

- (a) is, or becomes public knowledge other than by breach of these Conditions of Tender or another obligation of confidentiality; or
- (b) has been independently developed or acquired by the receiving party other than by a breach of confidentiality of that third party.

Contact Person means the Council representative responsible for enquiries, questions, and clarifications. The Contact Person is only contactable through the Electronic Tender Box's *Online Forum*.

Contract means the agreement between the Principal and the Supplier or Contractor.

Contract Amendments and Particulars means a document supplied by the Principal as part of the Request for Tender which details any amendments the Principal proposes to an Australian Standard Contract.

Contract Price has the meaning given in the General Conditions of Contract.

Contractor means the person bound to execute the work under the Contract.

Contract Work means anything which the successful Tenderer (if any) is or may be required to do under the Contract as described in the Tender Documents.

Electronic Tender Box means Vendor Panel.

Expiry Date means the date at which the Contract expires.

Fraser Coast Region means the Fraser Coast Regional Council Local Government Area, as detailed at <https://mapping.frasercoast.qld.gov.au/maps/?project=General&module=Property>.

General Conditions of Contract means the General Conditions of Contract (if any) as part of the Request for Tender.

Goods means the goods (and any associated services) provided, or to be provided, pursuant to Orders issued to the Supplier or Contractor from time to time by the Principal.

Government Department or Instrumentality means any governmental regulator, including Work Health Safety Queensland, the Queensland Building and Construction Commission, the Fair Work Commission and the Australian Building and Construction Commission.

GST has the meaning given in the General Conditions of Contract.

Improper Assistance means a wrongful act that unfairly gives an advantage to the Tenderer due to assistance, information or property provided by another party.

Intellectual Property Rights means any patent, design (whether registered or not), trademark or name, copyright or other protected right.

Letter of Acceptance has the meaning given in the General Conditions of Contract (as applicable).

Offer means an Offer submitted by the Tenderer in accordance with these Conditions of Tender and may include an alternative proposal.

Order means an order issued by the Principal to the Supplier or Contractor, in the form of a phone, email or electronic order.

Panel Arrangement means an agreement under which a Contractor or Supplier allows the purchase of specific goods, services and works (as applicable) at a predetermined price for a certain period on an 'as required' basis without the need to obtain individual quotations. This includes an *Approved Contractor List*, a

Register of Pre-Qualified Supplier or a Preferred Supplier Arrangement, as set out in section 231-233 of the *Local Government Regulation 2012* (Qld).

Personal Information has the meaning given in the *Information Privacy Act 2009* (Qld).

Personnel means the officers, employees, contractors and agents of the relevant party, but the Personnel of the Principal does not include the Tenderer and the Personnel of the Tenderer does not include the Principal.

Principal has the meaning given in the General Conditions of Contract.

Project Manager means a person who administers some or all of the responsibilities of the Principal in the delivery of a project, including arranging for Building Work to be carried out utilising Australian Government funding, including a developer or consortium;

Relevant Documents means:

- (a) the documents and information set out or referenced in these Conditions of Tender, Request for Tender and all other Tender Documents; and
- (b) any other information communicated (by any means) by or on behalf of the Principal to the Tenderer, whether before, during or after these Conditions of Tender, that relates to these Conditions of Tender, the Tender process, or the Contract,

except the documents and information that are intended to constitute the Contract.

Relevant Person means the Tenderer and each person engaged in the preparation of an Offer on behalf of the Tenderer.

Request for Tender has the meaning given in clause 1 of these Conditions of Tender.

Services means the Services (and any associated Goods) provided, or to be provided, pursuant to Orders issued to the Supplier or Contractor from time to time by the Principal.

Site means:

- (a) for Goods, the location for delivery of the Goods; and
- (b) for Services, the location where the Services are to be performed.

Site Inspection means an inspection at a specified place, date and time as detailed in the Invitation to Offer.

Special Conditions of Contract means the Special Conditions of Contract (if any) as part of the Request for Tender.

Specifications means the Specification as part of the Request for Tender, including any amendment or addition to the Specification.

Supplier means the person bound to execute the work under the Contract.

Supply means the goods, equipment, services and works (as applicable) that are being procured pursuant to the Request for Tender, as described in the Specification.

Tender means an Offer lodged in response to the Request for Tender.

Tender Documents has the meaning given in Clause 1.1 of these Conditions of Tender.

Tenderer means any person lodging a Tender.

Tender Response Forms means the documents outlined in the Invitation to Offer as required to lodge an Offer.